

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 2472 of 2004****For Approval and Signature:****HONOURABLE MR.JUSTICE AKIL KURESHI**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 4
 - 5 Whether it is to be circulated to the civil judge ?

=====

GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

HASMUKHBHAI R MAKWANA - Respondent(s)

=====

Appearance :

MS MONALI H BHATT for Petitioner(s) : 1,
MR MB DODIA for Respondent(s) : 1,

=====

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 15/09/2005

ORAL JUDGMENT

1. In the present petition, the petitioner S.T. Corporation has challenged the legality of the award dated 6th March, 2003 passed by Labour Court, Ahmedabad. The respondent workman was employed as a conductor by the

petitioner Corporation. In February, 2000 certain irregularities were found for which a charge sheet was issued to the respondent. Mainly there were two charges against the workman. First charge was that on 14/2/2000 the workman deposited a sum of Rs 14,025/- for having sold 272 tickets of Rs. 40/- each. The authorities felt that the bus had done only two trips on that day and, therefore, these many tickets could not have been sold. It was thus alleged that the workman deposited the fare collected of previous trips. Second allegation against the respondent was that he had not deposited the way bill with the authorities on 5th February, 2000. Pursuant to the departmental inquiry held finding that the charges are proved the petitioner imposed a punishment of dismissing the respondent from service by an order dated 4/9/2000. The appeal of the workman was rejected. He, therefore, raised the Industrial Disputes before the Labour Court, Ahmedabad. The Labour Court in its impugned award came to the conclusion that the workman had deposited the entire amount of tickets sold. There cannot be any objection about selling more tickets which would ultimately increase the revenue collection of the corporation. Regarding the non deposit of the way bill on 5/2/2000, the Labour Court observed that if the

employees at the collecting office table were examined, they could have thrown some light on the version of the workman that he had left the way bill on the table. The Labour Court though was pointed out that in his past service records there were numerous defaults committed by the workman, the Labour Court found it appropriate to interfere with the punishment and direct reinstatement of the workman with continuity and full back wages.

2. The decision of the Labour Court cannot be sustained. The workman was proved to have deposited the collected fare not on the same day as the procedure requires, but after few days. Regarding the non deposit of the way bill also the Labour Court in my view erred in interfering with the findings arrived at by the employer during the course of the inquiry. The finding that the workman had not deposited the way bill on 5th February, 2000 could not have been interfered with on the basis of conjunctures. The Labour Court also ignored the past service record and directed reinstatement with full back wages. Even if dismissal was harsh, considering the facts of the case, workman could not have been allowed to go scot free once when misconduct was proved against him.

3. In view of the above discussion, I do find that the Labour Court award does call for interference. Subsidiary question is however whether this was a case in which the employer ought to have resorted to dismissing the workman from service. As noted earlier the main two charges against the workman were that he had deposited the fare collected not on the same day but after few days and that he had not delivered the way bill to the authorities on 5th February, 2000. Neither of these two charges have direct involvement of misappropriation of funds. The conductor had issued tickets which he was bound to account for. The fact that he did not do so immediately and deposited the amount a few days later, would certainly be a case of misconduct. It is however not a case where the workman had pocketed the amount and deposited with the Corporation when such misconduct was detected. He had voluntarily after a few days deposited the fare collected. Considering the over all situation and striking a balance between the proved misconduct and the requirement to impose punishment on the workman, I find that dismissing him from service was certainly not called for. Both sides requested this Court to impose appropriate punishment instead of remanding the matter to the employer for substituting the punishment by any other

major punishments. As a rare and exceptional case, therefore, I find it appropriate to pass following orders.

(i)impugned award of the Labour Court is set aside.

(ii)The order of dismissal passed by the employer is also set aside.

(iii)In view of the statement made by the learned advocate for the petitioner that the workman is already reinstated in service there would be no necessity to pass a fresh order of reinstatement.

(iv)The workman shall be treated to have continued in service for a period between the date of dismissal and reinstatement though for a limited purpose of retiral benefits and not for wages or increments.

(v)He will be visited by penalty of withholding of five increments with future effect.

4. With these directions, the petition is allowed to the above extent. Rule is made absolute with no order as to costs.

(Akil Kureshi, J.)

smiata/